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Book Reviews

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Review of *The Cultural Production of Intellectual Property Rights: Law, Labor, and the Persistence of Primitive Accumulation* by Sean Johnson Andrews (Temple University Press)

Jared M Wright

ABSTRACT Sean Johnson Andrews' new book is a timely critique of Intellectual Property Rights (IPR) from a critical Marxist perspective. But the true goal of this work goes much deeper into tracing the history of the cultural foundations of the liberal state, private property laws, and labor relations, or what he calls the "reified culture of property." Regarding the latter, Andrews argues that IPR are only the latest manifestation of this culture. It is an invention functioning like a bandage to hold together the privileged status and power of the capitalist property-owning elite, a power inevitably hemorrhaged by the twin processes of digitization and globalization. In fact, the very existence of IPR, he contends, exposes the fundamental flaws of neoliberal capitalism, presenting us with a unique opportunity. Starting with an examination of IPR, he works backwards to critically interrogate the ideology developed around problematic notions of value creation and the division of labor which both lie at the very heart of the culture of property.

The Cultural Production of Intellectual Property Rights Law, Labor, and the Persistence of Primitive Accumulation. By Sean Johnson Andrews. Philadelphia, PA: Temple University Press, 2019, 274 pp. ISBN 978-1-4399-1429-8.

On the surface, Sean Johnson Andrews' new book is a timely critique of Intellectual Property Rights (IPR) from a critical Marxist perspective. But the true goal of this work goes much deeper into tracing the history of the cultural foundations of the liberal state, private property laws, and labor relations, or what he calls the "reified culture of property." Regarding the latter, Andrews argues that IPR are only the latest manifestation of this culture. It is an invention functioning like a bandage to hold together the privileged status and power of the capitalist property-owning elite, a power inevitably hemorrhaged by the twin processes of digitization and globalization. In fact, the very existence of IPR, he contends, exposes the fundamental flaws of neoliberal capitalism, presenting us with a unique opportunity. Starting with an examination of IPR, he works backwards to interrogate the ideology developed around notions of value creation and the division of labor which both lie at the very heart of the culture of property.

The book opens by positioning the author within the culture of digital piracy in the early 2000s. This is an experience I (and I imagine many others in my generation) could immediately relate to. In those days before streaming services and platforms like YouTube, online file sharing had little to no legal alternatives and provided content not otherwise available, including some significant political content. From Napster to Limewire to BitTorrent, millions of people around the world participated in p2p online file sharing culture, resulting in a certain shifting of values and questioning of the legitimacy of copyright laws and their application to digital content. Like many in this online culture,

Andrews views IPR less as a tool to protect the creativity of entrepreneurs and more as a tool to benefit the wealthy and stymie collective culture.

Andrews goes on to argue how IPR today are essentially an amalgamation of preexisting copyright, trademark, and patent laws designed to extend the hegemonic Western neoliberal capitalist system which values property above all else, even liberty. He cites Chantal Mouffe's "democratic paradox" to illustrate that even though the liberal state ostensibly exists to protect individual liberty, "in the balance between liberty and property, property always wins." (3) Intellectual property is therefore "just another form of private property to be ruthlessly protected by the capital-oriented state," (3) which can allow for no radical alternative to exist. However, the extension of private property rights to the immaterial realm of ideas and culture actually creates an opening for a broader critique of the culture surrounding property, its social valorization, and the role of the state in its protection. (6)

A unique contribution of this book is the way it centers culture in its analysis. The author argues that law itself is a cultural product, thus understanding culture is the key. In Chapter One, he lays out a framework for examining culture at the macro, mezzo, and micro levels. This allows him to show the mediating and synergistic functions of the various levels of culture (e.g. state, media, and individual), through which the culture of property came to be accepted as an unquestioned natural phenomenon in Western societies enshrined in the (neo)liberal state. This contribution alone should be of great interest to scholars of culture.

Chapters Two and Three trace the detailed history of this process of "cultural efficacy," from the Enclosure Movement of the 12th century to the English Civil War in the mid-1600s to the Law and Economics Movement of the 20th century, "to denote the process whereby top-down programs and products gain bottom-up legitimacy." (39) Put simply, many people today believe the free market to be a naturally occurring sacrosanct "bottom-up" phenomenon, but in reality, it was only one of many competing ideologies which happened to win out over others (such as the proto-Marxist "Levellers" in 16th century England) and was protected by the "top-down" coercive force of the liberal state. Describing this history and development of social philosophy and law is where Andrews's keen knowledge truly shines. Even in such extensive historical analyses, he manages to keep the reader engaged and shows relevance to the present day by framing each chapter in relation to contemporary IPR issues.

The author especially focuses on John Locke's defense of private property as a major justification for the Enclosure Movement and foundation of the reified culture of property. Locke reasoned that farmers could privatize land from the "commons" if they improved it (e.g. converting swamp land into productive farm land). Yet, big plantation farms of the day were based on the labor of appropriation through which the owners, not the individual laborers who worked for them, received all credit for improving the land, and hence for creating value. In Chapter Four, the author applies a Marxist critique to this, pointing out how industrial capitalism extended this idea that individual laborers are less important to the production of value than the owners of the means of production. But today's digitized "participatory culture" is undermining this logic by valorizing laborers once again as producers of value. Through platforms like YouTube and Wikipedia, everyone is a creator of content, and thus, value. This forces the central argument of the capitalist economic model into question; how is value produced, distributed, and owned?

Furthermore, Andrews asserts that this type of online distributed peer production in the Western world mirrors the global distribution of labor in world-systems theory. In Chapter Five, he further addresses globalization, arguing that extending IPR to other

countries exposes its limited cultural and historical relevance. Specifically, he analyzes the issue of global copyright piracy, such as local producers selling pirated DVDs in Ecuador or counterfeit blue jeans in Bolivia. Because capitalist production is based on appropriated labor (in this case, from the global South), the foreign (global North) owners claim the value and rewards of the labor of their workers by virtue of owning the brand names. Through such cases, he reveals the hierarchical nature of these labor relations and shows how global piracy can be seen, at least in some cases, as a rebellion against capitalist expropriation of direct producers in the global South.

These final two chapters are particularly strong. IPR show exactly how the ideology of free market and private property fails in modern times because digitization and globalization have produced new means of production and creation of value that do not require ownership or capitalist labor relations. It is an invention created to maintain the property rights of the elite in a world where their ideology is being undermined. Ironically, the more that aspects of culture fall under IPR protection, the more opportunities emerge for piracy, threatening both ownership and the legitimacy of the state protecting these unequal rights. Overall, I found this argument effective, cohesive, and to significantly exceed the critical contributions of other scholarship on IPR. With its big-picture view of the political economy, this work will certainly be of interest to digital sociologists and to those who study IPR, digital rights activism, online piracy, and other related issues.

In addition to this impressive feat of contextualizing IPR in the history of the reified culture of property, the most important contribution of this book is Andrews' engagement with what he calls the "balanced" IPR critics. This includes scholars such as Lawrence Lessig who have led the debate challenging IPR thus far. Lessig was instrumental in establishing the Creative Commons license and his work, such as *Free Culture*, has been a major inspiration for the Digital Rights movement. These scholars criticize the IPR "maximalists" who seek total and complete privatization and market incorporation of all immaterial culture. Yet, as Andrews points out, they largely have challenged IPR without challenging the dogma of the inviolable right of property. They critique the maximalist position while still upholding the reified culture of property by framing intellectual property as technologically unique from material property and thus requiring different rules.

Andrews engages with this debate consistently throughout the book. He asserts that, rather than treating immaterial culture as unique, "there is continuity in the enclosure of both material and immaterial property." (26). Therefore, the same arguments Lessig quite effectively applied to defending immaterial culture from IPR can be pushed even further to expose the fundamental flaws of capitalism. In other words, IPR "maximalists" are challenging the continuum of property from the wrong direction; they need to start closer to the source (i.e. global neoliberal capitalism).

Whether or not you agree with the Marxist view of private property rights, this is certainly the most interesting challenge of Lessig's scholarship I have ever come across, and Andrews makes a valid and effective case. Lessig's contradictory views on property (which Andrews shows in detail) in some ways show how deeply engrained this reified culture of property is. Nevertheless, the author acknowledges that the Free Culture movement has renewed visibility of the social production of value, and calls for an even more comprehensive movement which centralizes people's identity as laborers (class) and thus addresses the fundamental flaws of the culture of property and neoliberal state. In doing so, he argues it would also solve issues of white male supremacy and economic precarity associated with the recent wave of far-right populism and fascism around the world. On the other hand, Andrews is careful to critique moderate "balanced" IPR critics while remaining supportive of the activism it has inspired, avoiding stoking conflicts

between moderate and radical leftists. As a social movement scholar, I appreciate this nuanced approach. My only criticism is that he does not engage more with extant scholarship on social movements addressing IPR. For instance, Gabriella Coleman's *Coding Freedom* and Hector Postigo's *The Digital Rights Movement* both explore the collective resistance happening to IPR at the grassroots level which often goes beyond the moderate, "balanced" perspective the author addresses. Counter-hegemonic culture felt like a missing piece in this picture. Also, as the author acknowledges at the end, there is little attention to the role of intersectional issues including race, gender, and sexuality. The Marxist focus on class above all else can sometimes function to silence other identities, and this lack of solidarity needs to be solved before a movement, the type of which the author proposes, can emerge.

 [Bio](#)

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Jared M Wright is a PhD candidate in sociology at Purdue University. His research focuses on digital sociology and social movements, as well as qualitative and computational research methods. His dissertation explores emerging movement dynamics among online hacktivist communities, and he recently joined the Oxford Internet Institute's Summer Doctoral Programme.



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